

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GEORGE CALVIN PAYNE, III,

Petitioner,

v.

Case No. 2:09-cv-253
HON. GORDON J. QUIST

CATHERINE BAUMAN,

Respondent.

REPORT AND RECOMMENDATION

Petitioner has filed a motion to hold his petition for writ of habeas corpus in abeyance to allow him to present unexhausted claims in the state courts. It appears that petitioner would like to file at least seven additional claims that were never presented in the state courts with the opportunity to also present more claims. Petitioner claims that he would like to first present his new claims to the state courts in a motion for relief from judgment. In order to hold a habeas petition in abeyance, petitioner is required to file a timely affidavit showing: (1) good cause for the his failure to exhaust before filing his habeas petition; (2) that his unexhausted claims are not plainly meritless; and (3) that he has not engaged in intentionally dilatory litigation tactics. *See Rhines v. Weber*, 125 S. Ct. 1528, 1535 (2005). Petitioner has not presented such an affidavit. Petitioner has not shown good cause for his failure to present his new claims to the state courts prior to filing this petition. Petitioner has stated the claims that he would like to pursue, but has made no effort to explain the claims or why he failed to present them in his first appeal to the Michigan courts. Petitioner has not shown that his claims have merit or would not be dismissed in the state courts for failure to present the claims on direct review.

Accordingly, it is recommended that petitioner's motion to hold petition in abeyance (Docket #12) be denied.

NOTICE TO PARTIES: Objections to this Report and Recommendation must be served on opposing parties and filed with the Clerk of the Court within 14 days of receipt of this Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); W.D. Mich. LCivR 72.3(b). Failure to file timely objections constitutes a waiver of any further right to appeal. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). See also *Thomas v. Arn*, 474 U.S. 140 (1985).

/s/ Timothy P. Greeley

TIMOTHY P. GREELEY
UNITED STATES MAGISTRATE JUDGE

Dated: November 2, 2010